BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

HARRY H. CALLICOTTE Claimant	}
VS.	Dooket No. 202 642
CINTAS CORPORATION) Docket No. 202,642
Respondent AND	}
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY Insurance Carrier	

ORDER

Both claimant and respondent request review of Administrative Law Judge Alvin E. Witwer's Preliminary Hearing Order dated August 28, 1995.

ISSUES

The Administrative Law Judge granted claimant's request for medical and temporary total disability benefits. The respondent and insurance carrier request review of the finding that claimant sustained personal injury by accident arising out of and in the course his employment with the respondent. The claimant requests review of the Judge's refusal to order payment of the medical bills that were incurred prior to July 13, 1995, the date claimant filed his Application for Preliminary Hearing with the Division of Workers Compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

- (1) The jurisdiction and authority of the Appeals Board to review preliminary hearing issues is created and limited by K.S.A. 44-534a and K.S.A. 44-551. Under K.S.A. 44-534a the Appeals Board has the jurisdiction and authority to review the preliminary hearing issue of whether the claimant has sustained personal injury by accident arising out of and in the course his employment with the respondent.
- (2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. The Administrative Law Judge had the opportunity to personally observe claimant and respondent's general manager, Michael Williams, testify and assess their demeanor and

credibility. The Appeals Board agrees with the analysis and conclusion of the Administrative Law Judge and finds that claimant's version of the accident is persuasive, despite the testimony of others and the videotape presented. The Appeals Board finds for preliminary hearing purposes that claimant has proven it is more probably true than not that he sustained personal injury by accident arising out of and in the course of his employment with respondent on June 9, 1995, while moving a large laundry cart.

(3) The Administrative Law Judge acted within his authority and discretion in refusing to order payment of medical bills incurred prior to the date of filing of the Application for Preliminary Hearing. Therefore, the Appeals Board does not have jurisdiction, at this juncture of the proceeding, to address that issue under either K.S.A. 44-534a or K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Alvin E. Witwer's Preliminary Hearing Order dated August 28, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.
Dated this day of December 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Michael R. Wallace, Overland Park, Kansas Mark E. Kolich, Kansas City, Kansas Alvin E. Witwer, Administrative Law Judge Philip S. Harness, Director